

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

HARRY M. GONSOULIN, JR.

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:11cv231HSO-JMR

SCOTT FREEMAN, ET AL.

DEFENDANTS

**MEMORANDUM OPINION AND ORDER DENYING
DEFENDANTS' MOTION TO DISMISS**

BEFORE THE COURT is the Motion [2-1] to Dismiss filed on June 13, 2011, in the above captioned cause. Wanda Daniels, specially appearing, moves to Dismiss Plaintiff Harry Gonsoulin's ["Plaintiff"] Complaint against all named Defendants. Plaintiff, who is proceeding pro se, has failed to tender a Response. After consideration of the submissions, the record in this case, and the relevant legal authorities, and for the reasons discussed below, the Court finds that the instant Motion should be denied inasmuch as Wanda Daniels lacks standing to move for dismissal on behalf of the named Defendants.

I. FACTUAL AND PROCEDURAL HISTORY

On April 24, 2009, Plaintiff was stopped, detained, and arrested by Biloxi Police officers. Plaintiff claims that because the named Defendants wrongfully believed flagrant statements given by Katrina Wallace, he was falsely arrested and charged with aggravated assault. Am. Compl., at p. 16, att. as Ex. "1-2" to Compl. [1-1]. Plaintiff claims that three searches of his house were performed, with the third resulting in his arrest on "porn charges." *Id.* at p. 17.

Plaintiff filed his Complaint in the Circuit Court of Harrison County, Second Judicial District on May 6, 2011, Compl. att. as Ex. "1" to Not. of Removal, seeking compensatory and punitive damages for violation of his civil rights under 42 U.S.C. § 1983. Plaintiff's Complaint also asserts the following state law claims: false arrest, negligent and intentional infliction of emotional distress, negligence, assault, battery, nuisance, negligent supervision, malicious prosecution, and police misconduct. Along with the Biloxi, Mississippi, Police Department, the following Defendants are named: Scott Freeman, Robin Peters, William Newell, Michael Wills, Bruce Johnson, Donnie Dobbs, John Miller, and Aldon Helmert. Compl., at p. 1, att. to Not. of Removal. The record reflects that Wanda Daniels, who is not a named Defendant, received the summons on behalf of the City of Biloxi Police Department. Summons, at p. 29, att. to Not. of Removal. Pursuant to 28 U.S.C. §§ 1331 and 1446, Defendants removed the case to this Court on June 6, 2011. Not. of Removal, at pp. 1-2. Wanda Daniels, specially appearing, now moves the Court to dismiss Plaintiff's Complaint pursuant to FED. R. CIV. P. 12(b)(2), (b)(4), and (b)(5).

II. DISCUSSION

The record demonstrates that Wanda Daniels is not a named Defendant, and there is no indication of what connection Ms. Daniels has to the City of Biloxi Police Department or the other named Defendants. "It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Warth v. Seldin*, 422 U.S. 490, 517-518 (1975). The Court finds that because

Wanda Daniels is not a named Defendant and there is no evidence establishing her relationship to the named Defendants, she is not a proper party and lacks standing to move for dismissal on behalf of the named Defendants.

III. CONCLUSION

Based upon the foregoing, Defendants' Motion to Dismiss should be denied without prejudice.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, for the reasons stated more fully herein, Defendants' Motion [2-1] to Dismiss filed in the above captioned cause on June 13, 2011, is **DENIED WITHOUT PREJUDICE**.

SO ORDERED AND ADJUDGED, this the 14th day of November, 2011.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE